



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

PROVIDENCE MEMORIAL HOSPITAL
c/o LAW OFFICES OF P. MATTHEW O'NEIL
6514 MCNEIL DRIVE BLDG 2 SUITE 201
AUSTIN, TX 78729

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

LIBERTY MUTUAL INSURANCE CO

Carrier's Austin Representative Box

01

MFDR Tracking Number

M4-09-2863-01

MFDR Date Received

SEPTEMBER 19, 2008

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "As set forth in the attached billing and records, the claimant in this case was admitted and received inpatient hospital procedures, specifically relating to a posterior fusion exploration, dural tear repair and other back procedures as set forth on the billing. The procedures involved the use of the OR, local anesthesia, supplies, and pharmaceuticals. Fair and reasonable payment for this claim should be at 75% of the hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold. As set forth below, The State Office of Administrative Hearings and Travis County District Judge Margaret Cooper have each held and entered judgement that for medical charges exceeding \$40,000.00, the carrier is required as a matter of law to pay 75% of the charges. As such, the hospital requests that the Division immediately order the carrier to pay the balance owed and interest due and owed a result of the underpayment ... Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75%."

Amount in Dispute: \$46,274.19

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated December 1, 2008: "We have received the medical dispute filed by Providence Memorial Hospital for services rendered to [injured worker] for the 09/29/2007 through 10/01/2007 dates of service. The bill and documentation attached to the medical dispute have been re-reviewed and our position remains unchanged. Our rationale is as follows: ... After review of provider's Request for Reconsideration and the accompanying medical records, there is no evidence that there is anything particularly "unusually costly or extensive" about this hospital admission."

Response Submitted by: Liberty Mutual Insurance Group

Respondent's Supplemental Position Summary Dated November 30, 2011: "Requestor has failed to meet the Austin Third Court of Appeal's mandate that, to qualify for reimbursement under the Stop-Loss Exception (former 28 Tex. Admin. Code §134.401(c)(6)) a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded \$40,000 ...

Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor."

Response Submitted by: Hanna & Plaut LLP

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
September 27, 2007 through October 01, 2007	Inpatient Hospital Services	\$46,274.19	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated November 06, 2007

- Z710 – The charge for this procedure exceeds the fee schedule allowance

Explanation of Benefits dated November 16, 2007

- Z710 – The charge for this procedure exceeds the fee schedule allowance

Explanation of Benefits dated January 10, 2008

- Z710 – The charge for this procedure exceeds the fee schedule allowance
- Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each party was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed to the division by the requestor and respondent as noted above is considered. Consistent with the Third Court of Appeals' November 13, 2008 opinion, and 28 Texas Administrative Code §134.401(c)(6), the division will address whether the requestor

demonstrated that: audited charges **in this case** exceed \$40,000; the admission and disputed services **in this case** are unusually extensive; and that the admission and disputed services **in this case** are unusually costly.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$77,809.44. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement asserts that "Fair and reasonable payment for this claim should be at 75% of the hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold ... Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75% ." The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was four days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of four days results in an allowable amount of \$4,472.00.
 - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement is recommended.

The division concludes that the total allowable for this admission is \$4,472.00. The respondent issued payment in the amount of \$12,112.89. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____	_____	12/20/12
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service** demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.